

MASSACHUSETTS RULES OF CIVIL PROCEDURE

RULE 34

PRODUCING DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS, OR ENTERING ONTO LAND, FOR INSPECTION AND OTHER PURPOSES

Reporter's Notes--2016

Rule 34 was amended in 2016 to recognize the common practice of producing copies of documents rather than permitting inspection of the originals (Rule 34(b)(2)(C)(ii)). This amendment reflects a similar amendment to the Federal Rules of Civil Procedure effective in 2015.

The 2016 amendment further states that upon request, the producing party shall provide “all parties a fair opportunity to verify the copies by comparison with the originals.” This language, which is not part of the Federal Rules, reinforces the requesting party’s right to inspect the original documents under the existing language of Rule 34(a). To the extent that producing the original is deemed unduly burdensome or expensive, the producing party may seek a protective order under Rule 26(c). Such an order may restrict access to the original document, or may allow access upon payment of costs associated with production of the original.

Rule 34(c) was also amended to add a cross-reference to Rule 45 (Rule 34(c)(2)). Rule 45 had been amended in 2015 to allow a “documents only” subpoena against a nonparty (Rule 45(d)).